

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System  
Operator, Inc.

Docket No. ER06-1441-000

ORDER ACCEPTING LARGE GENERATOR INTERCONNECTION AGREEMENT  
AND REJECTING REQUESTED BUT UNFILED NON-CONFORMING  
PROVISIONS

(Issued October 30, 2006)

1. On August 31, 2006, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed an unexecuted Large Generator Interconnection Agreement (LGIA) among Consumers Energy Company (Consumers) as interconnection customer, the Midwest ISO, and Michigan Electric Transmission Company, LLC (METC) as transmission owner. The Midwest ISO states in its transmittal letter that the LGIA conforms to its *pro forma* LGIA.<sup>1</sup> However, Consumers and METC, as supported by the Midwest ISO, request that the Commission permit certain non-conforming provisions that are not in the LGIA.

2. As discussed below, we reject the requested non-conforming provisions (which pertain to the insurance provisions) and accept the proposed LGIA, effective September 1, 2006, subject to refund and the outcome of the proceedings in Docket Nos. ER06-1315-000 and ER06-18-000.

**Background**

3. As required by Order No. 2003, the Midwest ISO has Standard Large Generator Interconnection Procedures (LGIP) and a *pro forma* Large Generator Interconnection

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<sup>1</sup> See Transmittal Letter at 3. However, we note that the LGIA does not conform to the Midwest ISO's approved *pro forma* LGIA; it conforms to that LGIA as it would be revised by the Midwest ISO's filing in Docket No. ER06-1315-000.

Agreement (LGIA) that are set forth in Attachment X of the Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT).<sup>2</sup>

4. Consumers is a public utility in Michigan that owns a number of large generators that are connected to the transmission system owned by METC. That transmission system is operated by the Midwest ISO, the regional transmission organization and transmission provider. Consumers and METC have a Blanket Generator Interconnection Agreement (Blanket GIA) that governs the interconnection of several generators (units 1, 2, 3 and A) at Consumers' Campbell Complex. As an agreement filed before the effective date of the *pro forma* LGIP and LGIA in the Midwest ISO, this Blanket GIA was grandfathered under Order No. 2003 and was not required to conform with the *pro forma* LGIA.<sup>3</sup> As relevant here, the Blanket GIA included various insurance provisions that are different from the insurance provisions in the Midwest ISO's *pro forma* LGIA.

### **The Filing**

5. On August 31, 2006, under section 205 of the Federal Power Act,<sup>4</sup> the Midwest ISO filed a new LGIA for Consumers' Campbell Unit 3.<sup>5</sup> Contemporaneously, the Midwest ISO submitted in Docket No. ER06-1444-000 a request to remove Campbell Unit 3 from the grandfathered Blanket GIA. The Midwest ISO filed the instant LGIA because Consumers requested that the output of the Campbell Unit 3 be increased from

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<sup>2</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (August 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (January 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,662 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005), *appeal docketed sub nom. National Association of Regulatory Utility Commissioners v. FERC*, Nos. 04-1148, *et al.* (D.C. Cir Apr. 29, 2004 and later).

<sup>3</sup> Order No. 2003 at P 911-915.

<sup>4</sup> 16 U.S.C. § 824d (2000).

<sup>5</sup> The Midwest ISO has designated the proposed LGIA as Service Agreement No. 1755 under its TEMT.

820 MW to 849 MW and because a request to increase the capacity of an existing large generating facility constitutes a new interconnection request.<sup>6</sup> This increase in capacity requires \$75,000 worth of transmission network upgrades.

6. The Midwest ISO states that the LGIA conforms to its *pro forma* LGIA. However, the Midwest ISO states that certain modifications to the insurance provisions were requested by Consumers and METC because they want Campbell Unit 3 to have the same insurance provisions as do the rest of Consumers' generators that are interconnected to METC's transmission facilities. Consumers and METC want the Campbell Unit 3 to have the same insurance provisions as the Campbell Units 1, 2, and A, because all of these units are part of the same complex.

7. The insurance provisions that the Midwest ISO wants to change, at the request of Consumers and METC, are Articles 18.4, 18.4.5, 18.4.6, 18.4.9, and 18.4.10. The requested change to Article 18.4 would allow Consumers to continue using insurance coverage from Associated Electric & Gas Insurance Services Limited (AEGIS) for the Campbell 3 unit, even though AEGIS is not a licensed insurer in Michigan and does not meet the requirements of Article 18.4 for an "insurer authorized to do business or approved surplus lines carrier in the state where the interconnection is located." The suggested revision to Article 18.4.5 would allow Consumers to continue the current terms of the grandfathered GIA for the Campbell 3 unit inasmuch as AEGIS's insurance does not comply with the specific terms of Article 18.4.5. Modification of Article 18.4.6 would allow Consumers' insurance to continue on an "excess" basis, as permitted in the Blanket GIA, rather than being primary coverage. Revision to Article 18.4.10 would change the criteria for when a party could self-insure. The requested change in Article 18.4.9 replaces "certification" with "certificates." The Midwest ISO states that it supports the revised insurance provisions in this LGIA because they address unique characteristics of the Interconnection Agreement and provide consistency with the Blanket GIA governing the interconnection of Campbell Units 1, 2, and A.

8. The Midwest ISO requests waiver of the 60-day prior notice period to permit an effective date of September 1, 2006.

### **Notice and Responsive Filings**

9. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 54,049 (2006), with interventions and protests due on or before September 21, 2006. Timely motions to intervene and comments were filed by Consumers and METC.

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<sup>6</sup> The Midwest ISO citing Order No. 2003 at P 4, note 5.

10. Consumers characterizes its requested revisions as relatively minor changes to the *pro forma* insurance provisions to recognize the grandfathered nature of the Blanket GIA and allow Consumers to use the same coverage provisions for the Campbell 3 unit as it uses for its other generating units. Regarding its suggested revision to Article 18.4.10, Consumers further explains that the State of Michigan has its own criteria for when an entity may self-insure. In the Blanket GIA, Consumers says, the parties agreed to defer to the State criteria by limiting the types of insurance to which the *pro forma* LGIA's self-insurance criteria would apply. Consumers suggests that it should not be required to revamp its insurance program as a result of a single 29 MW upgrade at one unit out of its several thousand MW of generating capacity.

11. Consumers states that although AEGIS is not a licensed insurer in Michigan, and does not offer insurance that complies with the specific terms required by the *pro forma* version of Article 18.4.5, nonetheless, AEGIS can provide more than adequate insurance coverage for the Campbell Unit 3.<sup>7</sup>

12. METC also states that the requested changes will allow the insurance provisions to be consistent with the practices and requirements of METC's insurers. METC maintains that adopting insurance provisions that are inconsistent with existing arrangements could penalize the parties for increasing the capacity of the Campbell Unit 3. METC claims that the revised insurance provisions it wants would provide protection consistent with Order No. 2003 and the Midwest ISO's *pro forma* insurance provisions. Also, citing *Midwest ISO*, 114 FERC ¶ 61,134, at P 35 (2006), METC contends that the Commission has allowed departures from the *pro forma* insurance provisions.

## **Discussion**

### **A. Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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<sup>7</sup> Consumers states that AEGIS is a utility industry mutual insurance company commonly used by major gas and electric utilities throughout the U.S. and that it is well capitalized and A. M. Best rated A (excellent) and Fitch rated A+, as of September 18, 2006, and also is an eligible surplus lines insurer in most states.

**B. Analysis**

14. In Order No. 2003, the Commission required transmission providers (such as the Midwest ISO) to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with those documents.<sup>8</sup> Using *pro forma* documents streamlines the interconnection process by eliminating the need for an interconnection customer to negotiate each individual agreement. This reduces transaction costs, ensures that all interconnection customers are treated fairly, and reduces the need to file interconnection agreements with the Commission to be evaluated on a case-by-case basis.<sup>9</sup>

15. At the same time, the Commission recognized in Order No. 2003 and subsequent orders that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues or other unique factors would call for the filing of a non-conforming agreement.<sup>10</sup> The Commission made clear that the filing party must clearly identify the portions of the interconnection agreement that differ from its *pro forma* agreement and explain why the unique circumstances of the interconnection require a non-conforming interconnection agreement.<sup>11</sup> The Commission analyzes such non-conforming filings, which we do not expect to be common, to ensure that reliability concerns, novel legal issues or other unique factors necessitate the non-conforming provisions.<sup>12</sup> A party seeking case-specific deviations from an approved *pro forma*

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<sup>8</sup> Order No. 2003 at P 11-12.

<sup>9</sup> See *Id.* P 10 (“[I]t has become apparent that the case-by-case approach is an inadequate and inefficient means to address interconnection issues.”).

<sup>10</sup> See *Id.* P 913-915 and *MidAmerican Energy Co.*, 116 FERC ¶ 61,018 at P 8 (2006); *Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,024 at P 9 (2005).

<sup>11</sup> Order No. 2003-B at P 140 (“[E]ach Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each non-conforming provision....”).

<sup>12</sup> See, e.g., *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098 at P 9 (2005) (*PJM*); see also *Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,067 (2005); and *El Paso Elect. Co.*, 110 FERC ¶ 61,163 at P 4 (2005).

interconnection agreement bears an even higher burden to explain what makes the interconnection unique and why its changes are necessary (not merely “consistent with or superior to”) changes.<sup>13</sup>

16. Here, the Midwest ISO filed the *pro forma* LGIA but requested that the Commission allow non-conforming provisions pertaining to insurance provisions. We find that no reliability concerns, novel legal issues or other unique factors have been shown by the parties to necessitate the requested non-conforming provisions. The parties indicate that they would like to keep their old insurance provisions simply for convenience, so that they may continue using insurance provisions that comply with requirements of the State of Michigan. Incongruously, one of the requested revisions would allow Consumers to continue using an insurance company, AEGIS, that is not a licensed insurer in Michigan. The parties have not met their burden of justifying the proposed deviation from the *pro forma* LGIA. Furthermore, we have previously rejected requests for proposed deviations to the insurance provisions.<sup>14</sup> For these reasons, we will reject the requested additional revisions to the *pro forma* insurance provisions.

17. We note that the Midwest ISO filed the proposed LGIA based on the revisions to its *pro forma* LGIA that it proposed in Docket No. ER06-1315-000.<sup>15</sup> Since the Commission did not accept those provisions as filed, but rather, required the Midwest ISO to make a compliance filing consistent with the Commission’s September 29, 2006 order in that proceeding, the Commission is accepting the remainder of the proposed LGIA subject to the outcome of the proceeding in Docket No. ER06-1315-000. The

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<sup>13</sup> See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,252 at P11 (2006).

<sup>14</sup> See *Southern Company Services, Inc.*, 116 FERC ¶ 61,231 (2006); see also *MidAmerican Energy Company*, 116 FERC ¶ 61,018 (2006) and *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,257 (2006). The precedent cited by METC (*Midwest ISO*, 114 FERC ¶ 61,134, at P 35 (2006)) approved variations between the insurance provisions in the Midwest ISO’s *pro forma* LGIP and LGIA and those in the Commission’s *pro forma* LGIA and LGIP, as opposed to non-conforming provisions to an individual LGIA, which is the case here.

<sup>15</sup> See *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,306 (2006). In Docket No. ER06-1315-000, the Midwest ISO filed revisions to its *pro forma* LGIA. On September 29, 2006, the Commission issued an order conditionally accepting those revisions, and directing the Midwest ISO to make a compliance filing. The Midwest ISO is required to make the compliance filing by October 30, 2006.

filing also incorporates crediting language proposed in Docket No. ER06-18-000, which is currently pending rehearing.<sup>16</sup> Therefore, our acceptance is further subject to the outcome of that proceeding. Insofar as the proposed Interconnection Agreement reflects revisions to Midwest ISO's *pro forma* LGIA that are subject to the rehearing in Docket No. ER06-18 and to a compliance filing in Docket No. ER06-1315, we direct Midwest ISO to file, within 30 days of the date of an order either approving or directing further revisions to the Attachment X *pro forma* LGIA in Docket Nos. ER06-18 or ER06-1315, any necessary revisions to the proposed Interconnection Agreement to conform to the revisions required by those orders.

18. We find that good cause exists to grant the Midwest ISO's request for waiver of the 60-day prior notice requirement<sup>17</sup> to permit an effective date of September 1, 2006.

The Commission orders:

(A) The Midwest ISO's proposed LGIA is hereby accepted for filing, subject to the outcome of the proceedings in Docket Nos. ER06-1315-000 and ER06-18-000, and subject to refund and the revisions discussed in the body of this order, effective September 1, 2006.

(B) The Midwest ISO is hereby directed to make further compliance filings, as necessary, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>16</sup> *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106, *reh'g pending* (2006).

<sup>17</sup> 18 C.F.R. § 35.3 (2006), *Central Hudson Gas & Electric Corp.*, 61 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).